OPASTCO

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April 10, 2007

Commissioner Deborah Taylor Tate
Chair, Federal-State Joint Board on Universal Service
Federal Communications Commission
445 12th Street SW, Room 8-A204
Washington, DC 20554

Commissioner Ray Baum
State Chair, Federal-State Joint Board on Universal Service
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
P.O. Box 2148
Salem, OR 97308-2148

Written *Ex Parte* Presentation

Re: Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support WC Docket No. 05-337

Federal-State Joint Board on Universal Service CC Docket No. 96-45

Dear Commissioner Tate and Commissioner Baum,

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)[1] is writing to express its support for AT&T's interim plan to stabilize the High-Cost universal service program.[2] AT&T's interim stabilization plan is

[1] OPASTCO is a national trade association representing approximately 525 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers.

[2] *AT&T Letter to the Hon. Deborah Taylor Tate and the Hon. Ray Baum*, WC Docket No. 05-337, CC Docket No. 96-45 (fil. Mar. 22, 2007) (AT&T *Ex Parte* Letter). OPASTCO's support of AT&T's interim stabilization plan does not denote support of any objectives AT&T may have for long-term universal service reform or any universal service proposals that AT&T may advocate in the future.

a well-reasoned, easy-to-implement method by which the Joint Board and FCC can immediately gain control over the excessive and unnecessary growth in the High-Cost program while it continues to consider more long-term reforms. In particular, AT&T's plan should be adopted because it: (a) targets the source of virtually all of the growth in the High-Cost program – *i.e.*, wireless competitive eligible telecommunications carriers (CETCs), (b) is equitable, and (c) would not adversely impact the provision of service to consumers in rural areas.

First, AT&T's interim stabilization plan would immediately halt the approval of new CETCs and impose a freeze on the number of lines for which wireless CETCs may receive high-cost support. It would also reduce the support that wireless CETCs receive through the support mechanisms designed to replace access charges.[3] These targeted measures are entirely appropriate since, as Chairman Martin pointed out at the Joint Board's recent *en banc* meeting, "…almost all of the recent growth in high-cost universal service is largely a result of CETC access to high cost support."[4] In fact, "…CETC USF payments have been growing at a trend rate of 101 percent per year since 2002."[5] In stark contrast, "…since 2003 incumbent LEC payments have been relatively flat and even gone down in recent years."[6] Thus, AT&T's plan correctly avoids negatively impacting rural ILECs and their customers, which have posed no additional burden on the Fund in several years, and instead focuses on addressing the discrete source of the problem. Despite suggestions from others to impose a cap on the Fund that would impact all high-cost support recipients, there is no justification for such a "meat cleaver" approach, when the "scalpel" approach proposed by AT&T is what is called for.

Second, AT&T's interim stabilization plan is, without question, equitable. Since 1993, caps have limited the amount of support available to rural ILECs from the high-cost loop support (HCLS) mechanism, which is the largest of the support mechanisms through which these carriers receive funding. In fact, since July 2001, when these caps were "re-based" by the Commission,[7] rural ILECs have forgone **over $2.5 billion** in federal high-cost support.[8] The nature of the capping mechanism on HCLS has created significant unpredictability for rural ILECs from year to year, as an increase in support for any carrier lessens the support for other carriers. It is important to recognize that these caps have only been imposed on the support received by rural ILECs; the HCLS received by CETCs has been permitted to grow unfettered as the number of CETCs has grown and as their line counts have grown. Thus, assertions from the wireless sector that

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[3] The plan would also correct the sizing of the Interstate Access Support mechanism.
[4] Opening Remarks of Chairman Kevin Martin, *Federal-State Joint Board on Universal Service En Banc Meeting*, Washington, DC, p. 4 (Feb. 20, 2007).
[5] *Id.*
[6] *Id.*
[7] 47 C.F.R. §§36.603-36.604.
[8] Source: National Exchange Carrier Association USF data submissions. Note that the $2.5 billion figure does not include any of the support forgone from the caps in place prior to July 2001.

a temporary freeze on supported wireless lines is not competitively neutral are simply baseless.[9]

In addition, it is more than fair to reduce by 25 percent the support that wireless CETCs receive through the three access charge replacement mechanisms – Interstate Common Line Support (ICLS), Interstate Access Support (IAS), and Local Switching Support (LSS). As AT&T points out, wireless carriers have never relied on access charges as a method of cost recovery.[10] Thus, it is particularly inappropriate for wireless CETCs to receive support that was intended to simply replace a revenue source for rural ILECs that was eliminated by regulatory mandate. As AT&T correctly acknowledges, "carriers that have suffered no harm from the Commission's access charge reform should not reap a universal service windfall from the relief specifically designed to minimize the impact of such reform."[11] Therefore, considering that wireless CETCs should have never received access replacement funding, a 25 percent reduction in this support for wireless CETCs is a very reasonable way in which to modestly reduce the size of the High-Cost program while the Joint Board and Commission contemplate long-term reform.

Third, and most importantly, AT&T's interim plan to stabilize the High-Cost program would not adversely impact the provision of service to consumers in rural areas. For years now, wireless CETCs have been reaping windfalls of support through the illogical identical support rule, which bases the support they receive on the unrelated costs of the rural ILEC providing ubiquitous service throughout the area. Moreover, the rules have allowed wireless CETCs, upon designation, to immediately begin receiving the rural ILEC's cost-based per-line support amount for all of their existing customers in the designated territory, whom they were successfully serving without any support. Therefore, AT&T's plan to freeze the number of supported wireless lines and reduce the support that wireless CETCs receive via the access replacement mechanisms is a logical first step in controlling the unnecessary growth in the Fund. These measures would not negatively affect wireless service in rural areas.[12] All it would do is begin to eliminate the perverse incentives that presently exist for wireless carriers to seek ETC status merely to receive windfall support payments. In addition, a temporary moratorium on the designation of new CETCs would not harm the availability of universal service

[9] In addition, it should be noted that under the plan, a moratorium on the grant of CETC applications would be beneficial to existing wireless CETCs as it would provide them with a greater degree of predictability regarding the support they receive and not cause them to lose support as new CETCs are designated.
[10] AT&T *Ex Parte* Letter, p. 10.
[11] *Id.*, p. 11.
[12] The FCC's Eleventh CMRS Competition Report found that less densely populated counties (100 persons per square mile or less) have an average of 3.6 mobile competitors. The report concluded that "…CMRS providers are competing effectively in rural areas." *See, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 10982-10983, ¶¶86, 88 (2006).

throughout the country since virtually all Americans have access to service from *at least* one ETC (the ILEC) and, in most cases, more than one.[13]

On the other hand, a general cap applied to all high-cost support recipients, including rural ILECs, could seriously jeopardize the provision of universal service in rural service areas. Such a cap, depending on how it was applied, has the potential to drastically alter the support received by rural ILECs and cause those new support amounts to fluctuate radically. Unlike CETCs, rural ILECs are the historical carriers of last resort in their respective service areas. They have made huge network investments in order to offer high-quality telecommunications services to all of the consumers in their service areas, including those living in the most remote and highest-cost regions. Most rural ILECs have also made significant investments to deploy broadband to a substantial percentage of their customers and they are frequently the only provider of reliable broadband service in their communities. These investments in network infrastructure were made possible, in large part, by the availability of high-cost support that is based on the rural ILEC's *network costs*. Any cap that would de-link the support rural ILECs receive from their network costs and/or cause their support amounts to fluctuate wildly would inhibit them from making substantial network upgrades, particularly those necessary to offer broadband and related advanced services. Furthermore, lenders and investors would be less likely to make capital available to rural ILECs if the support levels they receive were either insufficient or unpredictable. Thus, the continuation of rural ILEC support based on network costs remains critical to ensuring that all consumers in rural service areas continue to have access to affordable, reliable telecommunications services and that high-quality broadband continues to be deployed to greater numbers of rural Americans.

OPASTCO therefore urges the Joint Board to recommend, and the Commission to adopt, the interim stabilization plan proposed by AT&T. Their targeted, equitable, and harm-free plan would control the growth and size of the High-Cost program in the short term, thereby enabling the Joint Board and Commission to carefully contemplate more fundamental reforms to sustain the Fund and universal service for the long term.

Sincerely,

<u>/s/</u> <u>Stuart Polikoff</u>
Stuart Polikoff
Director of Government Relations
OPASTCO

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[13] Approximately 70 percent of rural study areas have at least one CETC claiming support. *See*, Universal Service Administrative Company, *Federal Universal Support Mechanisms Fund Size Projections for the Second Quarter 2007*, Appendix HC18 (Jan. 31, 2007)

cc (via electronic mail):

Chairman Kevin J. Martin
Commissioner Deborah Taylor Tate
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Jonathan Adelstein
Commissioner Ray Baum
Chairman Lisa Polak Edgar
Commissioner Larry S. Landis
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